

Chairman William Kennard
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 28, 1998

FCC MAIL ROOM

Dear folks,

Thank you for ordering the Compliance and Information Bureau to respond to my letter of July 16, 1998 and I look forward to being able to address their response once it is legally served upon me. I am still waiting for legal delivery of the alleged Cease and Desist Order reportedly published on the Internet.

However, I'm confused as a Yankee at a square dance as to exactly what is going on in my case and am preparing to get a passel of lawyers together to help me do battle with y'all in Federal Court if forced. Nevertheless, I'm still holding out hope that reason will prevail and we can work out this intra-state non-commercial public access political speech press microradio issue in a civil way.

I would greatly appreciate it if we could set up a face to face meeting with somebody from the FCC who can explain to me what is going on and we could discuss this without having to do it all through letters. I also request that our situation be placed on an upcoming Commission Agenda and we be allowed to address the Commission to give first hand testimony about low power FM preferably here in Texas so that the Commission can see our operation in context.

Toward that end I will take this opportunity to set forth what I consider are the relevant issues of jurisdiction and contested points in this matter. We are still not done reading and researching all of the regulations and past cases which may be relevant in this matter so we may find additional issues and reserve our right to introduce those at a later time as well as respond to the alleged Cease and Desist Order if it is legally served.

Jurisdictional Challenges

A. The First Amendment of the Constitution of the United States of America states that no law shall abridge the right to freedom of the press. The press referred to here is not the printing press but the institution of the press as individuals involved in investigating and reporting news and controversial issues of public interest and debate whether it be on paper, radio, television, satellite or internet.

The **Hays County Guardian (Guardian)** owns and operates **micro (u)Kind Radio San Marcos (uKind)** as a non-commercial public access

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political speech press completely within the State of Texas and registered with the Texas Capitol Media Bureau since 1997. The **Guardian** has been a media organization in the Great State of Texas since 1989.

The **Guardian** acting as a non-commercial political speech press electronic pamphleteer is entitled Constitutional protection because it provides San Marcos residents with speech of the highest importance, political and economic reform, cultural and historical perspectives, environmental and other information of public necessity, public interest and convenience.

B. The Federal Communications Commission (FCC) lacks jurisdiction in this matter because they are not operating within all applicable laws of the United States of America for establishment as a federal agency as passed by the U.S. Congress.

C. The FCC can not demonstrate compliance with 61 Statute at Large, Section 101 and provide documentation that Title 47 Code of Federal Regulations contains the legally required enacting clause; "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled".

D. A letter dated March 3, 1997 from Martha E. Contee, Chief, Public Service Division, Office of Public Affairs to Mr. Eric Johnson admits that "(T)he FCC only regulates *inter-state* and foreign commerce in radio communication." (italics in original)

E. In response to a letter dated June 9, 1997 from Keith Perry to FCC Chairman Reed Hunt in which Mr. Perry asked "Does your agency (FCC) have any jurisdiction over *intra-state* radio communications, meaning within the State of Texas?

Norman Goldstein, Chief, Complaints and Political Programming Branch, Enforcement Division, Mass Media Bureau responded to Mr. Perry by letter dated April 16, 1998 saying that "your letter concerns a subject that is outside the Commission's jurisdiction". (bold italics in original)

F. The Tenth Amendment reserves all rights to the States that are not expressly removed from "state jurisdiction" by the Congress of the United States of America.

Contested Issues:

1. Joseph Ptak and the **Guardian** maintain that **uKind** is owned, operated and maintained by the **Guardian** as a non-commercial public access political speech press with more than one hundred volunteer programmers and listeners requesting party status in this matter and requesting a change of venue for planned conferences and hearings including the Mayor of San Marcos, Billy G. Moore.

The CIB alleges that Joseph Ptak is the sole owner and operator of **uKind** and controls the behavior and actions of everyone involved with the station.

Neither Norman Goldstein or Administrative Law Judge Richard Sipple have ever responded to the requests for party status from over 100 protestants.

The **Guardian** requests that all interested parties in this matter be given opportunity to participate and request publication of Public Notice of these proceedings in the Federal Register to allow public input during alternative dispute resolution .

2. **Micro (u) Kind Radio San Marcos** is the name of the micro-station and the only manner we refer to ourselves. There are no call letters as alleged by CIB when they refer to us as KIND. We formally request that all legal reference made to us be directed to be **Micro Kind Radio San Marcos (uKind)**.

3. The **Guardian** did in fact apply for permission from the FCC by letter dated March 18, 1998 even including a \$25 check to cover application and processing fees. On numerous occasions the **Guardian** requested that FCC provide information on how to license our non-commercial political speech press and formally requested a waiver as well as assistance from the FCC in obtaining the appropriate licensing forms and instructions relevant to our situation. The FCC has never responded to these pleas for assistance.

4. The **Guardian** contends that the FCC has become servile to corporate interests and is not acting in the public interest in the following cases affecting **uKind**.

The FM license for San Marcos (103.5 FM KEYI) is held by Clear Channel Communications, one of the four largest radio monopolies with over 200 stations. There is no office or local phone number for KEYI or Clear Channel Communincations in San Marcos or Hays County. It doesn't matter anyway because KEYI doesn't offer any news or information about San Marcos nor does it provide access to local musicians and politicians, nor advertisers for that matter. KEYI does not broadcast in the public interest of San Marcos.

The FCC has allowed a federal Class C2 license for 105.9FM, KFMK, Round Rock, Williamson County, Texas to be purchased as real property

by Capstar Broadcasting Corp., the largest radio monopoly in history, with direct ownership of 463 radio stations. The FCC allowed Capstar to purchase the Round Rock license despite being ineligible under the FCC moratorium on issuing new licenses by allowing them to buy out the three eligible parties after the cut-off date for a FCC decision in the matter.

The FCC sold the Round Rock license to Capstar despite the fact that uKind had laid claim to that frequency and requested consideration in the matter before Capstar did.

Capstar uses computer controlled centralized programming which is not generated in the cities to which their licenses are allotted, but force-fed to "affiliate stations" which may not even have offices or phone lines located there.

The KFMK studio, parking lot, transmission point, tower are all located wholly in Travis County and in the City of Austin and is not operating in the public interest, necessity or convenience.

5. The **Guardian** represents the alternative press and free public access to candidates running for elective office. Monopolization of the FM and AM radio spectrum has led to the commercialization of the news resulting in complete corporate control over the collection and distribution of news and the loss of independent news sources.

The **Guardian** provides non-commercial, non-corporate controlled news from a variety of sources without editorial restriction by and for local consumption.

In addition to the news service, the **Guardian** offers access to over 70 local volunteers who weekly host two hours of programming. Since March 26, 1997 thousands of citizens of the United States of America and the Great State of Texas have conveniently accessed the local airwaves to hear listeners/programmers truly represent the views and opinions of other citizens of San Marcos about urgent, controversial issues of public interest including religious programs and allows them to practice Freedom of Speech, Press and Religion.

The **Guardian** also offers free public access to all candidates for elective office during prime times.

6. That there now exists in AM and FM a monopoly in the ownership of radio stations.

7. That there has been a creation of affiliate broadcasting to remove any last resemblance of "local radio".

8. That in the United States Supreme Court Cases, Red Lion and N.B.C. that monopolies and loss of local programming were not to be tolerated.

9. The airwaves are not a limited resource.
10. Transmission of under 100 watts requires no license and can only be a problem if they cause interference with another station.
11. That because of FCC regulations the cost of access for the local citizen to use the public airwaves are cost inaccessible.
12. The FCC allowed Capstar to interfere with our signal while this issue is not final.
13. That there exists a pattern in the decisions of the FCC over the last 50 years that have removed the access of freedom of speech from the citizen and developed access for the corporate and political interests.
14. That although FCC regulated there is no public access for citizens on cable TV in San Marcos, Texas.
15. The FCC have allowed a few corporations to amass a fortune by decisions based on advertizing, profit and even entertainment and not for public interest, convenience nor necessity.
16. The FCC has created a niche for profit but not diversity.

Well, that's the crux of our position in this matter. We really hope that we can sit down with y'all pretty soon in a non-adversarial setting where we can come to a solution which could be used as a blueprint by other communities and microbroadcasters who seek to preserve local radio and independent sources of news.

It's time to stop all this foolishness of running around the country wasting taxpayers money on raids, seizures and arrests of people who are only trying to give voice to their communities rather than profits to corporations. Why can't we just all get along and discuss this like adults?

Free the airwaves,

Joe Ptak

Joe Ptak

Cc. Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Compliance and Information Bureau
Administrative Law Judge Richard Sipple
Office of the Secretary of the FCC